

CARPELAW^{PLLC}

2400 NW 80th Street #130 Seattle, Washington 98117

Phone: 206-624-2379 Fax: 206-784-6305

c a r p e l a w . c o m

Robert S. Appgood
rob@carpelaw.com

July 10, 2008

The Honorable Susan Illston
United States District Court
Northern District of California
450 Golden Gate Avenue
Courtroom 10 (19th Floor)
San Francisco, CA 94102

Re: Blue v. Johnson, Case No. 07-cv-5370 SI

Dear Judge Illston:

Defendant Woffinden submits this letter as her Surreply to Plaintiff's letter of July 9, 2008.

In Plaintiff's letter reply in the first paragraph on page two, Plaintiff Blue admits that "the parties await the IRS response..." However, in the last paragraph on page 2, Plaintiff Blue indicates that there exists a contingency that the "documents produced by Defendant *and received from the IRS* prove up Defendant's claim of indigence" (Emphasis added). Yet, Plaintiff Blue further states, "Because documents already received by Blue from these sources belie Defendant's claims of financial indigence, there can be no settlement today under any reading of these terms. Defendant Woffinden is at sea as to what records Plaintiff Blue refers by this statement, and no records were produced that support her contention that she received IRS records.

Defendant Woffinden has made a request for copies of the IRS records using the prescribed IRS form for these requests. *See* Exhibit A hereto. As the request forms show, Ms. Woffinden submitted her request and awaits a response from the IRS, whereupon she will deliver copies to the Plaintiff, as agreed.¹

¹ Defendant Woffinden submits that her tax records will show that her family earned only slightly more than the amount designated as the official poverty level for each of the years in question. Moreover, for the years 2005 to present, Ms. Woffinden is estranged from her husband and does not enjoy the economies of scale of livelihood provided by co-habitation.

Hon. Susan Illston
July 10, 2008
Page - 2

Plaintiff further states that “Blue does remain ready and willing to continue settlement discussions with Defendant simultaneous with litigation. Defendant, however, has made not one proposal of settlement.” Plaintiff’s reply letter at 2, fn.2. On June 16, 2008, Defendant knew that the Plaintiff was repudiating the settlement agreement. In an attempt to simply facilitate the finalization of the settlement, rather than dispute Plaintiff’s counsel’s implication that the settlement did not exist, Defendant’s counsel attempted to further the process of settlement by responding to Plaintiff’s counsel’s requests related to the settlement agreement terms, including on what terms Defendant Woffinden would like to propose settlement. The response to that was, “Ms. Woffinden proposes that the parties settle on the terms agreed in the settlement conference.” See Exhibit B hereto. The Defendant submits that Plaintiff makes her representations only to inflame this Honorable Court and to cast Defendant Woffinden in a light of bad faith.

Plaintiff disingenuously implies that Defendant Woffinden is somehow intentionally delaying performance under the settlement agreement. However, Exhibit B clearly shows otherwise. Plaintiff Blue was promised the delivery of three things as part of the settlement: 1) transfer of the violetblue.org domain; 2) service of tax records requests upon the IRS; and 3) the production of records to Plaintiff’s discovery requests. To date, all of these contingencies have been met.

Plaintiff’s counsel represents that she has accepted the domain and is holding it “in trust.” Plaintiff’s reply letter at 2, paragraph 1. Notwithstanding this representation, neither by the terms of the settlement agreement, *nor by agreement of the parties*, was the domain to be tendered to trust, nor received in trust. Defendant Woffinden tendered the domain per the terms of the settlement agreement, *and for no other purpose whatsoever*. Acting as agent for the Plaintiff, her counsel accepted the tender by transferring the domain into her name. Confusingly, for reasons known only to the Plaintiff, Plaintiff *insists* on repeated repudiation of the settlement agreement and *insists* on continuing this unnecessary litigation in what appears to be some need to “punish” Defendant Woffinden.

As Exhibit A shows, Defendant Woffinden has made the agreed requests to the IRS and now awaits their pleasure for response. As Exhibit B shows, Defendant Woffinden has produced the records sought by Ms. Blue in the settlement agreement.

What more *does* Plaintiff *want*? Defendant Woffinden is exasperated by Plaintiff Blue’s position that the settlement does not exist, and yet she continues to accept the benefits of Ms. Woffinden’s promises to make specific deliveries to her as agreed in the settlement. All Ms. Woffinden desires is to finalize the settlement and be done with this onerous and extremely expensive litigation that is taking its toll on Ms. Woffinden and her small children.

Respectfully submitted,



Robert S. Apgood

EXHIBIT A

Form **4506-T**

(Rev. January 2008)

Department of the Treasury
Internal Revenue Service**Request for Transcript of Tax Return**

► **Do not sign this form unless all applicable lines have been completed.**
Read the instructions on page 2.

► **Request may be rejected if the form is incomplete, illegible, or any required line was blank at the time of signature.**

OMB No. 1545-1872

Tip: Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can also call 1-800-829-1040 to order a transcript. If you need a copy of your return, use **Form 4506**, Request for Copy of Tax Return. There is a fee to get a copy of your return.

| | | | |
|---|---|----|------|
| 1a Name shown on tax return. If a joint return, enter the name shown first. | 1b First social security number on tax return or employer identification number (see instructions) | | |
| Dustin Woffinden | REDACTED | | |
| 2a If a joint return, enter spouse's name shown on tax return | 2b Second social security number if joint tax return | | |
| Ada Mae Woffinden | RE | DA | CTED |
| 3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code | | | |
| Ada M Woffinden, --REDACTED-- 98571 | | | |
| 4 Previous address shown on the last return filed if different from line 3 | | | |
| --REDACTED-- 98571 | | | |
| 5 If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax information. | | | |

Caution: DO NOT SIGN this form if a third party requires you to complete Form 4506-T, and lines 6 and 9 are blank.

- 6 Transcript requested.** Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ► 1040
- a Return Transcript**, which includes most of the line items of a tax return as filed with the IRS. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120A, Form 1120H, Form 1120L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days ☒
- b Account Transcript**, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 30 calendar days ☐
- c Record of Account**, which is a combination of line item information and later adjustments to the account. Available for current year and 3 prior tax years. Most requests will be processed within 30 calendar days ☐
- 7 Verification of Nonfiling**, which is proof from the IRS that you **did not** file a return for the year. Most requests will be processed within 10 business days ☐
- 8 Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript.** The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2006, filed in 2007, will not be available from the IRS until 2008. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 45 days ☐

Caution: If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

- 9 Year or period requested.** Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.
- 12 / 31 / 2007 12 / 31 / 2006 12 / 31 / 2005 12 / 31 / 2004

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, **either** husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer.

| | | | |
|------------------|--|------|--|
| Sign Here | Signature (see instructions) | Date | Telephone number of taxpayer on line 1a or 2a () |
| | Title (if line 1a above is a corporation, partnership, estate, or trust) | | |
| | Spouse's signature | Date | |

Form **4506-T**
(Rev. January 2008)
Department of the Treasury
Internal Revenue Service

Request for Transcript of Tax Return

- ▶ **Do not sign this form unless all applicable lines have been completed.**
Read the instructions on page 2.
- ▶ **Request may be rejected if the form is incomplete, illegible, or any required line was blank at the time of signature.**

OMB No. 1545-1872

Tip: Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can also call 1-800-829-1040 to order a transcript. If you need a copy of your return, use **Form 4506**, Request for Copy of Tax Return. There is a fee to get a copy of your return.

| | | | |
|---|--|-----------|-------------|
| 1a Name shown on tax return. If a joint return, enter the name shown first. Dustin Woffinden | 1b First social security number on tax return or employer identification number (see instructions) REDACTED | | |
| 2a If a joint return, enter spouse's name shown on tax return Ada Mae Woffinden | 2b Second social security number if joint tax return RE | DA | CTED |
| 3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code Ada M Woffinden, --REDACTED-- 98571 | | | |
| 4 Previous address shown on the last return filed if different from line 3 --REDACTED-- WA 98571 | | | |
| 5 If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax information. | | | |

Caution: DO NOT SIGN this form if a third party requires you to complete Form 4506-T, and lines 6 and 9 are blank.

- 6 Transcript requested.** Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ▶ **1040**
- a Return Transcript**, which includes most of the line items of a tax return as filed with the IRS. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120A, Form 1120H, Form 1120L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days ☒
- b Account Transcript**, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 30 calendar days ☐
- c Record of Account**, which is a combination of line item information and later adjustments to the account. Available for current year and 3 prior tax years. Most requests will be processed within 30 calendar days ☐
- 7 Verification of Nonfiling**, which is proof from the IRS that you **did not** file a return for the year. Most requests will be processed within 10 business days ☐
- 8 Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript.** The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2006, filed in 2007, will not be available from the IRS until 2008. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 45 days ☐

Caution: If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

- 9 Year or period requested.** Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.
- 12 / 31 / 2003 12 / 31 / 2002 12 / 31 / 2001 / /**

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, **either** husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer.

| | | | |
|------------------|---|------|---|
| Sign Here | Signature (see instructions) | Date | Telephone number of taxpayer on line 1a or 2a () |
| | Title (if line 1a above is a corporation, partnership, estate, or trust) | | |
| | Spouse's signature | Date | |

EXHIBIT B

Colette Vogele, 04:55 PM 6/17/2008, Re: Blue v. Johnson - settlement

To: Colette Vogele <colette@vogelelaw.com>
From: Robert Apgood <rob@carpelaw.com>
Subject: Re: Blue v. Johnson - settlement
Cc:
Bcc:
Attached:

At 03:34 PM 6/17/2008, you wrote:
Subject to FRE 408

Dear Mr. Apgood,

Plaintiff Violet Blue would like to see this case resolved through a prompt settlement. She would therefore like to know if Ms. Woffinden will be proposing firm (new) dates by which Ms. Woffinden will accomplish the following tasks identified as contingencies in the settlement conference:

(a) the transfer of the domain;

The EPP code allowing your client to transfer the domain to her own registrar has been provided to you by way of cc of our letter to Magistrate Judge Laporte on June 13. The EPP transfer code is: siq6253. My client cannot transfer the domain "to" your client. Rather, using the EPP code, your client must transfer the domain "from" my client.

(b) the service of the subpoenas on the IRS; and

Actually, the IRS doesn't accept subpoenas any longer. They are now enforcing the use of Requests for Transcript For Tax Return (Form 4506T). These forms were sent to the Internal Revenue for copies of Ms. Woffinden's tax records for the past seven years and were mailed on or about June 13. As soon as a response is received, I shall forward those records on to you. Form 4506T indicates that responses should be sent out by the IRS in approx. ten (10) days from their receipt.

(c) the production of the records.

Responses to Plaintiff's discovery requests went out via priority mail in yesterday's mail. You should be receiving them by tomorrow.

If so, we ask that Ms. Woffinden make any such proposal as soon as possible, and in no event later tomorrow, June 19, 2008.

Ms. Woffinden proposes that the parties settle on the terms agreed in the settlement conference.

Please be advised that my client is out of the state for about another week.

Regards,

Colette Vogele, 04:55 PM 6/17/2008, Re: Blue v. Johnson - settlement

Robert S. Apgood

<rob@carpelaw.com>
206-624-2379